

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

**IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
POPLAR RIVER (BASIN 40Q)**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR THE
SUPPLEMENTAL INTERLOCUTORY DECREE
OF POPLAR RIVER (BASIN 40Q)**

The Water Court issues these Findings of Fact and Conclusions of Law to address one (1) water right claim that was not included in the Final Decree for the Poplar River Basin, Basin 40Q.

FINDINGS OF FACT

DESCRIPTION OF BASIN

1. Basin 40Q encompasses the Poplar River, its tributaries, and the groundwater located within Basin 40Q. The Poplar River is a tributary of the Missouri River. The boundaries of Basin 40Q are outlined on the attached map.
2. Basin 40Q is located in portions of Valley County, Daniels County, and Roosevelt County, Montana. Basin 40Q also is in a portion of the Fort Peck Indian Reservation.

PRIOR PROCEEDINGS

3. On April 8, 2020, the Water Court issued to the Department of Natural Resources and Conservation (“DNRC”) a statewide “Order Regarding Preparation of Summary Reports and Issuance of Interlocutory Decrees.” (“Interlocutory Decrees

Order”). The Interlocutory Decrees Order identified categories of claims (“Unadjudicated Claims”) that the Water Court had not included in prior preliminary or temporary preliminary decrees in all basins in Montana other than Basins 76L and 76LJ. The Interlocutory Decrees Order directed DNRC to provide certain assistance to the Water Court for Unadjudicated Claims, including the direction that DNRC review its records to “identify all Unadjudicated Claims” and to “[i]nclude all examined Unadjudicated Claims in future Summary Reports submitted to the Water Court.”¹ The Water Court included Basin 40Q in the list of basins that were subject to the Interlocutory Decrees Order.

4. On September 28, 2020, the DNRC submitted to the Water Court a summary report for Basin 40Q. Based upon the information DNRC provided in the summary report, the Water Court issued the Interlocutory Decree for Basin 40Q on January 14, 2021. The Interlocutory Decree included eighty-nine (89) Unadjudicated Claims DNRC identified as located within Basin 40Q.

5. The Water Court’s issuance of the Interlocutory Decree commenced objection, counterobjection, and notices of intent to appear periods for the claims in the decree. After these periods closed, the Water Court conducted proceedings to resolve all issue remarks and objections on claims in the Interlocutory Decree.

6. After completing the objection and issue remark resolution process, the Water Court requested DNRC assistance to prepare a final decree. As part of this request, the Water Court asked DNRC to provide the Court with all relevant information in its possession bearing upon existing rights to be included in the final decree. DNRC responded to this request, and on December 20, 2022, provided an affidavit to the Water Court that included the following certification:

All existing active and severed water rights for Basins 40R and 40Q have been included in the Final Decree, were examined, and are included in the Final Decree abstracts provided to the Water Court for the purposes of review and mailing. The Final Decree abstracts provided to the Water Court are the most recent versions.

¹ DNRC’s claim examination rules define a “summary report” as “the department’s report to the Montana water court consisting of individual abstracts, the claimed and clarified data and a summary of the department’s examination findings for each claim within a basin or subbasin.” Rule 2(a)(66), W.R.C.E.R.

7. In reliance on DNRC’s certification, on December 22, 2022, the Water Court entered the Final Decree of Water Rights for Poplar River, Basin 40Q (“Final Decree”).

8. The Water Court intended the Final Decree to establish the existing rights and priorities of all existing water rights filed in Basin 40Q pursuant to the Montana Supreme Court’s Order of December 7, 1981; all claims filed pursuant to Section 85-2-221, MCA; and all rights defined by Section 85-2-222(1), MCA and claimed pursuant to Section 85-2-222(2)(a), MCA; and all existing rights of any federal agency or Indian Tribe pursuant to Sections 85-2-702 and 82-2-703, MCA filed within Basin 40Q.

9. On April 13, 2023 – after the date of the Final Decree – DNRC notified the Water Court by email that DNRC had discovered an Unadjudicated Claim located in Basin 40Q that was not included in the Basin 40Q summary report. DNRC identified the claim as 40O 30134425. DNRC followed up with a memorandum dated May 11, 2023.

10. This claim was filed as an “exempt” claim under the provisions of House Bill 110 (“HB 110”) passed by the 2017 Montana Legislature (codified at § 85-2-222, MCA). DNRC incorrectly designated the claim with the basin code prefix for the Milk River Below Whitewater Creek Basin, Basin 40O, so it was coded as claim 40O 30134425 even though the point of diversion and place of use on the claim form is wholly within Basin 40Q.

11. On May 31, 2023, the Water Court issued an order redesignating the basin prefix for this claim from Basin 40O to Basin 40Q, so the claim now is identified in the centralized water rights database as claim 40Q 30134425. To avoid confusion, the claim is referred to in this Order as “claim 30134425.”

12. Claim 30134425 is an Unadjudicated Claim that has not been included in any prior decree in Basin 40Q even though the claim is located in Basin 40Q, and even though Basin 40Q was subject to the Interlocutory Decrees Order.

13. As a result of DNRC’s incorrect basin coding and the failure to properly include claim 30134425 in the Basin 40Q summary report, the claim was not included in

either the Basin 40Q Interlocutory Decree or the Final Decree. The failure to include it was by no fault of the claim's owners.

14. It now is necessary to issue this Supplemental Interlocutory Decree to ensure that claim 30134425 is properly decreed before including it in a supplemental final decree.

DECREE ABSTRACT

15. In addition to these Findings and Conclusions, this Decree includes an abstract of claim 30134425. Claim 30134425 is the only claim included in this Decree.

16. A copy of this Decree is located at the DNRC Glasgow Regional Office, the DNRC Water Rights Adjudication Office in Helena, and the Montana Water Court in Bozeman. This information is also available on the Water Court's website and DNRC's Water Rights Adjudication website.

UNRESOLVED FACTUAL AND LEGAL ISSUES

17. Issuance of this Decree commences a new objection period. The objection period allows interested parties to raise issues regarding ONLY claim 30134425. Issues may also be raised by the Water Court on its own initiative. Rule 8, W.R.Adj.R.

18. Unresolved factual and legal issues have been noted by issue remarks on the claim abstract. Any issue remarks not resolved through the objection process will be resolved pursuant to § 85-2-248, MCA.

19. Water users within this Basin and other interested persons will be mailed a Notice of Entry of Supplemental Interlocutory Decree and Notice of Availability contemporaneously with the filing of these Findings and Conclusions. The Notice of Availability explains the objection process and sets a deadline for filing objections with the Water Court.

CONCLUSIONS OF LAW

1. The Water Use Act requires the Water Court to issue a preliminary decree, interlocutory decree, or supplemental decree for all existing rights in each basin.

2. The Water Use Act requires DNRC to "provide the water judge with all information in its possession bearing upon existing rights." Section 85-2-243, MCA. The

Act authorizes the Water Court to request and to rely on such information from DNRC in issuing water rights decrees.

3. The Water Use Act requires the Water Court to issue a Supplemental Interlocutory Decree for this claim because it has not been included in a prior decree.

4. These Findings of Fact and Conclusions of Law are issued for inclusion in the Supplemental Interlocutory Decree for the Poplar River (Basin 40Q) as authorized by §§ 3-7-224(2), 85-2-231, MCA.

5. This is a general adjudication of existing water rights. An existing water right is a right to the use of water which is protected under the law as it existed prior to July 1, 1973. Section 85-2-102(13), MCA.

6. The Water Use Act exempted certain claims from the statement of claim filing process but allowed claims to be voluntarily filed. Section 85-2-222, MCA. These exempt rights were for stock or domestic uses from instream or groundwater sources. In 2013, the Montana Legislature created a process to file claims for existing water rights that were exempt from filing in the statewide water right adjudication. Section 85-2-222(2), MCA.

7. The Montana Water Court has jurisdiction to enter a Supplemental Interlocutory Decree for the Poplar River (Basin 40Q) pursuant to Title 85, Chapter 2, Montana Code Annotated. *Ariz. v. San Carlos Apache Tribe*, 463 U.S. 545, 103 S. Ct. 3201 (1983); *State ex rel. Greely v. Confederated Salish and Kootenai Tribes*, 219 Mont. 76, 712 P.2d 754 (1985).

8. These Findings of Fact, Conclusions of Law, and abstracts define one (1) existing water right under Montana law in Basin 40Q and comprise a Supplemental Interlocutory Decree in accordance with § 85-2-231, MCA, and Rule 4, W.R.Adj.R.

Service Via Email:

Sara Calkins, Clerk of Court
Montana Water Court
1123 Research Drive
PO Box 1389
Bozeman, MT 59771-1389
Sara.calkins@mt.gov

Nate Ward
Laura Hinck
MT DNRC
Water Rights Adjudication Bureau
1424 9th Avenue
Helena, MT 59620-1601
NWard@mt.gov
LHinck2@mt.gov

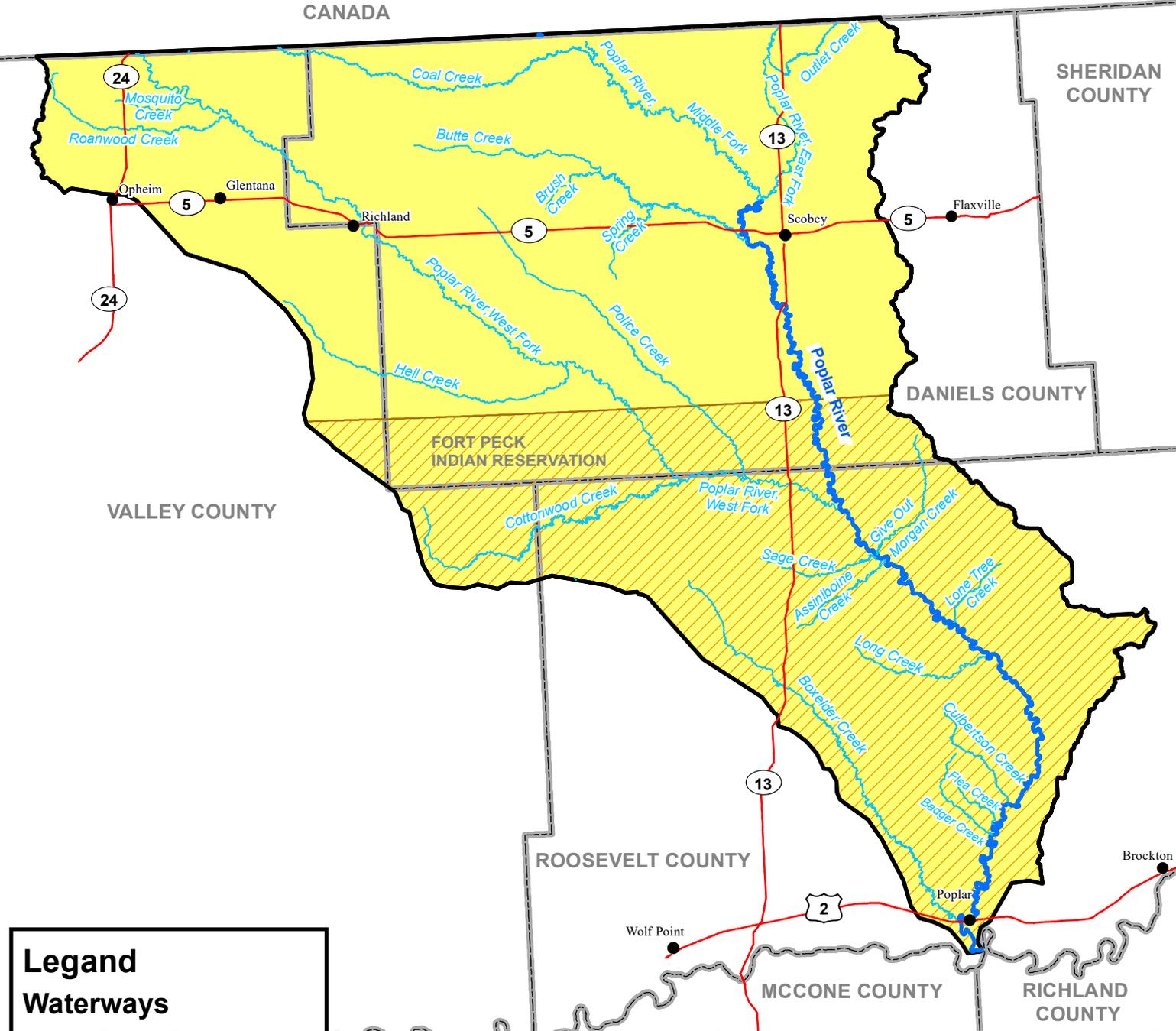
Anna Pakenham Stevenson, Administrator
MT DNRC
Water Resources Division
1424 9th Avenue
Helena, MT 59620-1601
Anna.PakenhamStevenson@mt.gov

Todd Netto, Regional Manager
Ryan Hartwell, Water Resource Specialist
MT DNRC
Glasgow Regional Office
222 Sixth Street South
PO Box 1269
Glasgow, MT 59230-1269
Ryan.hartwell@mt.gov
tnetto@mt.gov

Service via USPS Mail:

Clifford W. Greenwood
Kathy P. Greenwood
4475 Nashua Rd. N
Larslan, MT 59244-9736

Basin 40Q Poplar River



Legend

Waterways

- Poplar River
- Streams

Roadways

- Primary Roads

County

Basin 40Q Boundary

Cities/Towns

Reservation

N

1:625,000
1 inch = 9.86 miles

0 2.5 5 10 15 20 Miles

